



## State of Utah

### Department of Natural Resources

MICHAEL R. STYLER  
*Executive Director*

### Division of Oil, Gas & Mining

JOHN R. BAZA  
*Division Director*

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

December 15, 2005

CERTIFIED RETURN RECEIPT  
7002 0510 0003 8603 2595

Develon Wurth  
Rock Products of Utah  
843 South Main  
Heber City, Utah 84032

Subject: Reassessment for State Cessation Order No. MC-05-01-14(1), Rock Products of Utah, Brown's Canyon Quarry (M/043/017), Summit County, Utah

Dear Mr. Wurth:

The proposed civil penalty assessment for the above referenced cessation order was sent to you on October 19, 2005. At that time the abatement had not been completed and some of the facts surrounding the violation were not available. In accordance with rule R647-7-105, the penalty is to be reassessed when it is necessary to consider facts, which were not reasonably available on the date of the issuance of the proposed assessment. Now that the Cessation Order has been terminated the assessment can be completed. Following is the reassessment of the penalty for the cessation order:

- MC-05-01-14 Violation 1 of 1      \$880

The enclosed worksheet specifically outlines how the violation was assessed. You should note that good faith points have now been awarded.

Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal

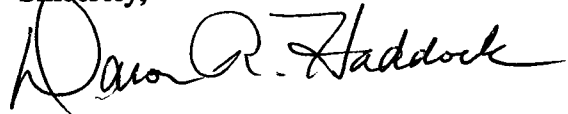
Develon Wurth  
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Conference is distinct from the Assessment Conference regarding the proposed penalty.

2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the reassessment. Please remit payment to the Division, mail c/o Vickie Southwick.**

Sincerely,



Daron R. Haddock  
Assessment Officer

Enclosure: Worksheets  
O:\M043-Summit\M0430017-BrownsCynRock-RockProducts\non-compliance\REAssessmentLtr.doc

**WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS & MINING  
Minerals Regulatory Program**

COMPANY / MINE Rock Products of Utah/ Brown's Canyon Quarry PERMIT M/043/017

NOV / CO # MC-05-01-014(1) VIOLATION 1 of 1

REASSESSMENT DATE December 14, 2005

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

**TOTAL HISTORY POINTS 0**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?  
***Conducting Activities outside of the approved permit area without***

***appropriate approvals.***

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. Acreage has been disturbed at this location without revising the permit to do so. While the Operator has a permit for a large mine, which allowed disturbance up to a certain area, the operation has expanded onto lands which he is not authorized to mine (approximately 4.1 acres). A reclamation surety has not been posted for this area. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 8

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector stated that the operator has disturbed approximately 4.1 acres of land that had not been approved for disturbance. The damage was the loss of vegetation and possibly soil resources on the area disturbed. Further discussion with the inspector revealed that the damage is probably temporary. While much of the soil and vegetation have been disturbed, the site could still be reclaimed. While the damage is extensive over the 4.1 acres, it probably does not leave the site. Damage is assessed in the lower 1/3 of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?                       
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS                     

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

TOTAL SERIOUSNESS POINTS (A or B) 28

**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

**ASSIGN NEGLIGENCE POINTS 16**

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*** *The inspector indicated that the Operator had been notified in May of 2004 that he needed to amend his plan to include the area disturbed and to provide a reclamation bond for this area. While he did supply an amendment, the bond was never provided and while the amendment was approved in December of 2004, the Operator has now expanded beyond the area included in the amendment. The inspector indicates that the Operator benefited economically as a result of mining in an area not permitted and by not providing adequate surety. A prudent operator would understand the need to keep within the approved boundaries and provide a revised NOI and bond prior to disturbing additional area. The Operator was not only negligent in this regard, but failed to comply with previous notifications. Thus the assignment of points in the Greater Degree of Fault range.*

**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

**Easy Abatement Situation**

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	

(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- |   |   |             |
|---|---|-------------|
| X | Rapid Compliance  | -11 to -20* |
|   | (Permittee used diligence to abate the violation)   |             |
| X | Normal Compliance   | -1 to -10*  |
|   | (Operator complied within the abatement period required)  |             |
| X | Extended Compliance   | 0           |
|   | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) |             |
|   | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)   |             |

EASY OR DIFFICULT ABATEMENT? Difficult (plans required)

ASSIGN GOOD FAITH POINTS -16

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* Since plans were required for abating this violation, the abatement is considered to be difficult. The operator was required to provide an amendment to the Notice of Intent, which would show the added disturbance and also provide an updated reclamation surety. The Inspector stated that the Operator contacted him the morning after the Cessation Order was issued in order to find out what bond amount needed to be posted and what information needed to be submitted. This would indicate diligence on the part of the Operator. The original abatement deadline set for October 30<sup>th</sup>, was extended to November 16, 2005, primarily to allow the Division time to calculate the necessary bond amount and then allow the Operator time to comply. The bond amount was actually determined and given to the Operator on October 24, 2005. The same day Mr. Wurth notified the Division that Zion's Bank had the required paperwork and was prepared to issue a revised CD. The required amendment and bond were received on November 15, 2005, which was in advance of the November 16<sup>th</sup> deadline. Any delay in getting the abatement completed, was mostly due to Division and bank processing time. The Operator did comply rapidly on most of the requirements and was very diligent in trying to complete the abatement. Thus assignment of good faith points in the middle of the rapid compliance range.

V. **ASSESSMENT SUMMARY (R647-7-103.3)**

NOTICE OF VIOLATION # <b><u>MC-05-01-14(1)</u></b>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>28</u>
III. TOTAL NEGLIGENCE POINTS	<u>16</u>
IV. TOTAL GOOD FAITH POINTS	<u>-16</u>
TOTAL ASSESSED POINTS	<u>28</u>
 <b>TOTAL ASSESSED FINE</b>	 <b><u>\$880</u></b>

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